

NO. 87-1273

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Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

MARSHA WISLOCKI-GOIN,
Petitioner,

vs.

DARLENE WANDA MEARS, Judge
Lake Superior Court, Juvenile
Division and LAKE COUNTY, INDIANA,
a municipal corporation,
Respondents.

**BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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QUESTION PRESENTED

Whether the Seventh Circuit and the District Court correctly applied the time bar rule of *Zipes v. Transworld Airlines, Inc.*, 455 U.S. 385 (1982) to the facts of this case.

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STATEMENT OF THE CASE

A.

NATURE OF THE CASE

Petitioner Marsha Wislocki-Goin (hereinafter "Mrs. Goin") seeks review of the Seventh Circuit's affirmance of the District Court's entry of judgment for Respondents Mears and Lake County, Indiana after trial of a 42 U.S.C. § 2000e sex discrimination case.

B.**COURSE OF PROCEEDING BELOW**

Petitioner Goin filed her one-count Complaint for wrongful discharge, pursuant to 42 U.S.C. § 2000(e), on January 17, 1984. Exhibit B of her Complaint showed Mrs. Goin had received her "right to sue" letter November 4, 1983. Exhibit A of her Complaint was her Charge of Discrimination filed with the EEOC on May 18, 1983. Respondent Darlene Wanda Mears, Judge of the Lake Superior Court, Juvenile Division (hereinafter "Judge Mears") filed her Answer March 12, 1984. A one-day bench trial was held January 21, 1986.

On October 20, 1986, the District Court issued its Findings of Fact and Conclusions of Law, and directed the Clerk to enter Judgment for Defendants. Said Judgment was duly entered October 21, 1986. The United States Court of Appeals for the Seventh Circuit affirmed the District Court on October 21, 1987.

C.**FACTS RELEVANT TO ISSUES PRESENTED**

Mrs. Goin, a female, was hired as a teacher at the Juvenile Center in Lake County, Indiana on or about August 9, 1982 by Respondent Darlene Wanda Mears, the Judge of the Lake Superior Court, Juvenile Division, who also happens to be female. The Lake County Juvenile Center is a maximum security holding facility for children. On or about January 3, 1983, Judge Mears fired Mrs. Goin for reasons found by the District Court to be legitimate business concerns, not sexual discrimination. This finding was affirmed by the Seventh Circuit and is not here challenged.

Mrs. Goin's Complaint consisted of a single count alleging her wrongful discharge by Respondents. She never attempted to amend her Complaint to raise the issue of her failure to be transferred to the "jail job."

**REASON WHY THE WRIT SHOULD NOT ISSUE
THE SEVENTH CIRCUIT CORRECTLY-
APPLIED THE ZIPES RULE**

This case came to trial on Mrs. Goin's single-count Complaint for damages alleging sex discrimination under 42 U.S.C. § 2000e *et seq.* Mrs. Goin contended that she was discharged from her position as a teacher at the Lake County Juvenile Center on or about January 3, 1983 on the basis of her sex. Defendants below vigorously denied this contention. Jurisdiction thus vested in the District Court *as to Petitioner's discharge* pursuant to 42 U.S.C. § 2000e-5(f).

42 U.S.C. § 2000(e)-5(e) requires a party allegedly aggrieved by sex discrimination to file a charge of discrimination with the EEOC within 180 days of the discriminatory act. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982). Mrs. Goin's Charge of Discrimination was filed with the Equal Employment Opportunity Commission (EEOC) on May 18, 1983 and attached to her Complaint in the District Court as Exhibit A. In her Charge, Mrs. Goin specifically referred to her discharge (first contention) and to the denial of a teaching position at the Lake County Jail (second contention). This second contention allegedly occurred on or about September 23, 1982. Evidence at trial showed that Mr. Mark Helmerich, a male, obtained the Lake County "jail job" on or about October 9, 1982 and continued with it through December 31, 1982. (Transcript pp. 75, 78, 79, 81). The job became part-time in January, 1983. (Transcript p. 82).

On its face, by operation of simple arithmetic, the so-called "jail job" portion of Mrs. Goin's EEOC Charge of Discrimination was time barred when it was filed. It is therefore not surprising that her *Complaint, never amended*, alleged *only* wrongful termination by Judge Mears, *not* failure to hire or transfer to the Lake County jail job. Judge Mears' Answer raised the defenses of failure to state a claim and lack of jurisdiction. Had Mrs. Goin amended her Complaint to allege wrongful failure to hire or transfer, defendants below could have amended their respective Answers.

Now, Petitioner Goin contends Respondents have "waived" a defense to an allegation the plaintiff below never raised in the pleadings at all. See *Joyce v. L. P. Stewart, Inc.*, 227 F.2d 407 (D.C. Cir. 1955); *Pension Benefit Guaranty Corp. v. Greene*, 87 F.R.D. 483 (W.D. Penn. 1980). Fundamental fairness dictates a defendant be given notice in the body of a Complaint of all allegations raised by a plaintiff, including those clearly time barred, before being held to Rule 8, Federal Rules of Civil Procedure, specifically. In fact, failure to state a claim was raised by Judge Mears in her Answer, and the merits of the time bar issue were briefed at trial below. *Jones v. Miles*, 656 F.2d 103 (5th Cir. 1981). Any alleged waiver pursuant to Rule 8(c) was *not* raised by Mrs. Goin in the District Court. (Plaintiff's written Final Argument, Plaintiff's Response to Defendant's Trial Brief, Plaintiff's Rebuttal to Defendant's Final Argument). Rather, the Preliminary Pretrial Conference Report, filed January 28, 1985 on p. 2 lists "Cause of Action" as Mrs. Goin's discharge. At trial, defendants challenged any reference to the "jail job" (Transcript pp. 19-20) as outside the pleadings. *Federal Savings & Loan Insurance Corp. v. Hogan*, 476 F.2d 1182 (7th Cir. 1973).

This is not a case where plaintiff did not know what transpired. As the District Court and the Seventh Circuit found, Mark Helmerich was sent to the "jail job" in October, 1982; Mrs. Goin knew the position was filled by a male.

The undisputed evidence at trial, by Mark Helmerich, was that Helmerich was sent to the "jail job" full-time from October, 1982 until January 1, 1983. He continued to receive his \$14,000.00 per year salary as a group leader; Marsha Goin was *hired* as a teacher at the Juvenile Center for \$15,750.00 per year. (Joint Exhibit 2). As of January 1, 1983, funding for the "jail job" was under the jurisdiction of the Sheriff of Lake County, and the position was reduced to part-time status and split between Mark Helmerich and Wayne Wackowski. None of the evidence below indicated that Mrs. Goin did not know this. The time then began to run. *Ortiz v. Chicago Transit Authority*, 639 F.Supp. 310 (N.D. Ill. 1986). A plaintiff has a reasonable

duty to inquire concerning discrimination information. *King v. Telesphore Intern, Inc.*, 632 F.Supp. 981 (N.D. Ill. 1986). The Seventh Circuit and the District Court properly found this claim by Mrs. Goin to be time barred by the facts herein. *Pullman-Standard v. Swint*, 456 U.S. 273 (1982).

CONCLUSION

For the foregoing reasons, Respondents respectfully urge that the writ of certiorari be denied.

Respectfully submitted,

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